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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,247	04/24/2006	Jean-Claude Volckmann	930024-2041	8015
7590 Ronald R Santucci Frommer Lawrence & Haug 745 Fifth Avenue New York, NY 10151		03/17/2009	EXAMINER SINGH, SUNIL, K	
			ART UNIT 3732	PAPER NUMBER
			MAIL DATE 03/17/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/564,247	VOLCKMANN ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Sunil K. Singh	3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 04 December 2008.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-10 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-10 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

### ***Objection to the Claims***

Claim 1 is objected to under 37 CFR 1.75(i) which requires each element or step of the claimed invention to be separated by a line indentation.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 4 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Jacklich (US 4,444,560).

Jacklich adequately discloses a device 7 capable of being molded including:

- a body 9, a part 37 to contain the product and an orifice 33 for ejecting the product;
- a drive cylinder 61 with teeth 63 consisting of two consecutive crests connected by a radius (see figure 1) moving in a bore 45;
- a lever 11 acting on the teeth of the cylinder through an articulated pawl 57 and returned by a pawl 65;

- wherein the lever 11 is connected by means of a joint (the hinge connection at 51) with the ability to be dislocated or attached without requiring a tool;
- wherein the drive cylinder 61 has a sector 69 with no teeth and has one end shaped to engage in a slot 49 formed on the nonreturn pawl.

Claims 1, 5, and 7 – 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Vadas (4340367).

Regarding claim 1, Vadas adequately discloses: a device (figures 1 – 4) for ejecting a product, including a product container (L) with an orifice (20) for ejecting the product, a drive cylinder (100) with teeth (102), an articulated lever (40) acting on the drive cylinder through an articulated pawl (130) articulated to the lever, and a nonreturn pawl (160), wherein the lever is connected to the body by means of a joint (41,42) that is capable of dislocating/attaching without requiring a tool.

With respect to claims 5, and 8 – 10, Vadas further discloses a liner (170) able to rotate with respect to the body, and a liner (110) that is able to have translational movement (sliding; column 5, lines 37 – 42) with respect to the body, and has a means of connection (must inherently be connected) to the part intended to contain the product. Further, the body is made of a material that can be molded.

Addressing claims 7 and 8, Vadas further teaches a liner with a stud (stop shoulder 114) designed to act on a pawl (column 5, lines 54 – 65).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vadas (4340367).

Vadas adequately discloses a device for ejecting a product as claimed as discussed above, but fails to teach a liner being elastically deformable part constituting the non-return pawl. However, it would have been obvious to one of ordinary skill in the art, at the time of applicant's invention, to select an elastic material for the since it has been held that the selection of a known material based on its suitability for its intended use supported a *prima facie* obviousness determination in "Sinclair and Carroll Company v. Interchemical Corporation" (325 US 327, 65 USPQ 297 (1945)).

***Response to Arguments***

Applicant's arguments have been fully considered but they are not persuasive. Applicant argues that neither of the prior art references teach a joint that facilitates attaching and dislocating the lever with respect to the body without requiring a tool. However, this limitation is being functionally claimed. In an apparatus claim, functional language is given little patentable weight. As long as the prior art discloses the

structural limitations of the claimed invention and is capable of performing the function then it meets the requirements. It is the examiner's position that the prior arts meet the structural limitations of the present invention as claimed and is capable of performing the claimed function.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil K. Singh whose telephone number is (571) 272-3460. The examiner can normally be reached on Monday-Friday (Increased Flex Schedule).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris L. Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

03/13/2009

/Sunil K Singh/  
Examiner, Art Unit 3732

/Ralph A. Lewis/  
Primary Examiner, Art Unit 3732